

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JAMES CHRISTOPHER GARNER,

Plaintiff,

v.

STATE OF TEXAS, *et al.*,

Defendants.

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CIVIL ACTION NO. 5:20-CV-00011-RWS-CMC

ORDER

Plaintiff James Christopher Garner, an inmate proceeding *pro se*, filed the above-styled and numbered civil action complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff's lawsuit concerns the legality of his theft conviction. After review of the pleadings, the Magistrate Judge recommended the lawsuit be dismissed until such time as Plaintiff shows his conviction has been overturned, expunged by executive order, declared invalid in a state collateral proceeding or called into question through the issuance of a federal writ of habeas corpus. Docket No. 9 (citing *Heck v. Humphrey*, 512 U.S. 477, 486 (1994); *DeLeon v. City of Corpus Christi*, 488 F.3d 649, 656–57 (5th Cir. 2007)).

A copy of this Report was sent to Plaintiff at his last known address, return receipt requested, but no objections have been filed. Because no objections to the Magistrate Judge's report have been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C § 636(b)(1)(C); *Douglass v. United Services Automobile Assoc.*, 79 F.3d 1415,

1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the pleadings and the Magistrate Judge's report and agrees with the report. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants.’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 9) is **ADOPTED** as the opinion of the Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** to the claims being asserted again until such time as the Plaintiff can show the conviction forming the basis of this lawsuit has been overturned, expunged by executive order, declared invalid in a state collateral proceeding or called into question through the issuance of a federal writ of habeas corpus. This dismissal is without prejudice to Plaintiff’s right to challenge this conviction through any lawful means, including, but not limited to, state or federal habeas corpus applications.

So ORDERED and SIGNED this 22nd day of January, 2021.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE